

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
LIND, TELLITOCCI and KRAUSS
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E2 JASON H. KRAUSE
United States Army, Appellant

ARMY 20140388

Headquarters, 1st Cavalry Division
Gregory A. Gross, Military Judge
Lieutenant Colonel James D. Levine II, Staff Judge Advocate (pretrial)
Lieutenant Colonel Michael D. Jones, Acting Staff Judge Advocate (post-trial)

For Appellant: Major Aaron R. Inkenbrandt, JA; Captain J. David Hammond, JA (on brief).

For Appellee: Major A.G. Courie III, JA (on brief).

9 April 2015

SUMMARY DISPOSITION

Per Curiam:

A military judge sitting as a general court-martial, convicted appellant, pursuant to his pleas, of conspiracy, loss of military property by neglect, two specifications of larceny, and housebreaking in violation of Articles 81, 108, 121, and 130, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 908, 921 and 930 (2012) [hereinafter UCMJ]. Appellant was also charged with a separate specification of larceny of three items. He pleaded guilty to the lesser-included offense of wrongful appropriation. The government then attempted to prove that appellant stole those three items. The judge found appellant guilty of stealing one but wrongfully appropriating two of the items, all under the same specification and in violation of Article 121.* The convening authority approved the adjudged

* Appellant does not complain of the duplicitous finding and we find no prejudice to appellant because of it. *Cf. United States v. Bradley*, 30 M.J. 308 (C.M.A. 1990).

sentence to a bad-conduct discharge, 26 months confinement, total forfeiture of all pay and allowances and reduction to the grade of E-1.

This case is before the court for review under Article 66, UCMJ. Appellant submits the case on its merits and raises three matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), one of which, complaining of excessive post-trial delay, merits brief discussion and relief.

The time from sentence to action in this case was 230 days. Appellant asserts, and we agree, that 204 of those days are attributable to the government. The time from action until the record was received by this court was 49 days, all attributable to the government. This amounts to 84 days beyond the point where we presume unreasonable delay in post-trial processing at action and 19 days more than is expected for receipt of the record by this court. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Though we find no prejudice as a result of the excessive delay, or due process violation because of egregious delay, the court must still review the appropriateness of the sentence in light of unjustified dilatory post-trial processing. UCMJ art. 66(c). *See generally United States v. Toohey*, 63 M.J. 353, 362-63 (C.A.A.F. 2006); *Moreno*, 63 M.J. at 143; *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002); *United States v. Ney*, 68 M.J. 613, 616–17 (Army Ct. Crim. App. 2010).

Here appellant promptly demanded speedy post-trial processing of his case the day after sentence was announced. In addition, he complained of excessive post-trial delay in his Rule for Courts-Martial 1105 submissions. The staff judge advocate addressed this complaint in the addendum to his original recommendation but offered no explanation for the delay. The record of trial is only 124 pages and the case involves charges and matters of no great complication. We recognize the defense is responsible for 26 days of this processing time and enjoyed some collateral benefit from the delay in the form of deferred forfeitures. However, the government's lack of explanation for its excessive delay despite appellant's demand for speedy processing and post-trial complaint, in combination with the excessive time it took to deliver the record to this court, when considered in light of the record as a whole, convinces us that relief is warranted. *See Moreno*, 63 M.J. at 137; *Tardif*, 57 M.J. at 224; *see also United States v. Canchola*, 64 M.J. 245 (C.A.A.F. 2007); *United States v. Arias*, 72 M.J. 501, 507 (Army Ct. Crim. App. 2013); *United States v. Bauerbach*, 55 M.J. 501, 507 (Army Ct. Crim. App. 2001).

The findings of guilty are AFFIRMED. After considering the entire record, the court affirms only so much of the sentence as provides for a bad-conduct discharge, confinement for 25 months, total forfeiture of all pay and allowances and reduction to the grade of E-1. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of his sentence set aside by this decision, are ordered restored. *See* UCMJ arts. 58b(c) and 75(a).



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court